

1 ROB BONTA, State Bar No. 202668  
2 Attorney General of California  
3 JON S. ALLIN, State Bar No. 155069  
4 Supervising Deputy Attorney General  
5 JEREMY DUGGAN, State Bar No. 229854  
6 Deputy Attorney General  
7 1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 210-6008  
Fax: (916) 324-5205  
E-mail: Jeremy.Duggan@doj.ca.gov  
*Attorneys for Defendants*  
*Pena, Garcia, and Gallemore*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

## DORA SOLARES,

1:20-CV-00323-LHR

Plaintiff, **DEFENDANTS PENA, GARCIA, AND  
GALLEMORE'S ANSWER TO FIFTH  
AMENDED COMPLAINT, AND  
DEMAND FOR JURY TRIAL**

RALPH DIAZ, et al.,

Action Filed: March 2, 2020

## Defendants.

Defendants Pena, Garcia, and Gallemore (Defendants) answer Plaintiffs' Fifth

Amended Complaint (ECF No. 134), filed February 26, 2025, as follows.

## I. RESPONSE TO INTRODUCTION

1. In response to paragraph 1 of the Fifth Amended Complaint (5AC), Defendants admit that Luis Romero was transferred to California State Prison, Corcoran in March 2019 and deny the remaining allegations of this paragraph.

## II. RESPONSE TO JURISDICTION AND VENUE

2. In response to paragraph 2 of the 5AC, Defendants admit that the 5AC purports to bring claims under 42 U.S.C. § 1983, the Eighth and Fourteenth Amendments of the U.S.

1 Constitution, and California statutes. Defendants further admit that jurisdiction is proper at  
2 present under 28 U.S.C. § 1331 and 28 U.S.C. § 1367. Defendants deny the remaining  
3 allegations of this paragraph.

4 3. In response to paragraph 3 of the 5AC, Defendants admit that venue is proper  
5 under 42 U.S.C. § 1391, and that the 5AC purports to bring claims under 42 U.S.C. § 1983,  
6 the Eighth and Fourteenth Amendments of the U.S. Constitution, and California statutes.  
7 Defendants deny the remaining allegations of this paragraph.

8 **III. RESPONSE TO PARTIES**

9 4. In response to paragraph 4 of the 5AC, Defendants lack knowledge or  
10 information sufficient to form a belief about the truth of the allegations of this paragraph, and  
11 on that basis deny them.

12 5. In response to paragraph 5 of the 5AC, Defendants lack knowledge or  
13 information sufficient to form a belief about the truth of the allegations of this paragraph, and  
14 on that basis deny them.

15 6. In response to paragraph 6 of the 5AC, Defendants lack knowledge or  
16 information sufficient to form a belief about the truth of the allegations of this paragraph, and  
17 on that basis deny them.

18 7. In response to paragraph 7 of the 5AC, Defendants admit that Burnes is a  
19 correctional sergeant employed by the California Department of Corrections and  
20 Rehabilitation (CDCR), and was employed at California State Prison, Corcoran in March  
21 2019, that Gamboa is, and was in January 2019, employed by CDCR, that Loza is, and was in  
22 March 2019, employed by CDCR, as a correctional officer, at California State Prison  
23 Corcoran, that Maytubby was, in March 2019, employed by CDCR, that Munoz was, in  
24 March 2019, employed by CDCR, as a correctional lieutenant, at California State Prison  
25 Corcoran, and that Garcia, Pena and Gallemore were, in 2019, employed by CDCR, as  
26 correctional officers, at California State Prison, Corcoran. Defendants deny the remaining  
27 allegations of this paragraph.

28

1       8. In response to paragraph 8 of the 5AC, Defendants deny the allegations of this  
2 paragraph.

3       9. In response to paragraph 9 of the 5AC, Defendants admit that Gamboa was  
4 employed by CDCR at California State Prison, Corcoran in January 2019 and that Defendants  
5 Burnes, Loza, Maytubby, Pena, Gallemore, Garcia, and Munoz were employed by CDCR at  
6 California State Prison Corcoran in March 2019. Defendants admit that the 5AC purports to  
7 bring claims against other individuals who were employed at California State Prison,  
8 Corcoran in 2019. Defendants deny the remaining allegations of this paragraph.

9       10. In response to paragraph 10 of the 5AC, Defendants admit that Plaintiffs purport  
10 to sue unnamed Doe Defendants, and deny the remaining allegations of this paragraph.

11       11. In response to paragraph 11 of the 5AC, Defendants admit that Plaintiffs purport  
12 to sue unnamed Doe Defendants, and deny the remaining allegations of this paragraph.

13       12. In response to paragraph 12 of the 5AC, Defendants admit that Gamboa was  
14 employed by CDCR at California State Prison, Corcoran in January 2019 and that Defendants  
15 Burnes, Loza, Maytubby, Pena, Gallemore, Garcia, and Munoz were employed by CDCR at  
16 California State Prison Corcoran in March 2019. Defendants admit that the 5AC purports to  
17 bring claims against other individuals who were employed at California State Prison,  
18 Corcoran in 2019. Defendants deny the remaining allegations of this paragraph.

19 **IV. RESPONSE TO EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20       13. In response to paragraph 13 of the 5AC, Defendants admit that Plaintiff Solares  
21 filed a government claim mentioning the death of Luis Romero in September 2019.  
22 Defendants further admit that unserved Plaintiff Romero Gonzalez has not filed a government  
23 claim. Defendants deny the remaining allegations of this paragraph.

24 **V. RESPONSE TO FACTS**

25       **A. Response to “The Decision to Place Luis Romero in Jaime Osuna’s Cell”**

26       14. In response to paragraph 14 of the 5AC, Defendants admit that Luis Romero was  
27 transferred to California State Prison, Corcoran in March 2019 and deny the remaining  
28 allegations of this paragraph.

1       15. In response to paragraphs 15-19 of the 5AC, Defendants deny the allegations of  
2 these paragraphs.

3       **B. Response to “The Failure to Conduct Safety Checks”**

4       16. In response to paragraphs 20-23 of the 5AC, Defendants admit that Luis Romero  
5 was killed, and his body mutilated, by Jaime Osuna. Defendants deny the remaining  
6 allegations of these paragraphs.

7       **VI. RESPONSE TO DAMAGES**

8       17. In response to paragraphs 24-28 of the 5AC, Defendants deny the allegations of  
9 these paragraphs.

10       **VI. RESPONSE TO FIRST CLAIM FOR RELIEF**

11       18. In response to paragraph 29 of the 5AC, Defendants incorporate their responses  
12 to paragraphs 1-28, above.

13       19. In response to paragraphs 30-32 of the 5AC (including both paragraphs  
14 numbered “31”), Defendants deny the allegations of these paragraphs.

15       **VII. RESPONSE TO SECOND CLAIM FOR RELIEF**

16       20. In response to paragraph 33 of the 5AC, Defendants incorporate their responses  
17 to paragraphs 1-32, above.

18       21. In response to paragraph 34-40 of the 5AC, Defendants deny the allegations of  
19 these paragraphs.

20       **VIII. RESPONSE TO THIRD CLAIM FOR RELIEF**

21       22. In response to paragraph 41 of the 5AC, Defendants incorporate their responses  
22 to paragraphs 1-40, above.

23       23. In response to paragraphs 42-48 of the 5AC, Defendants deny the allegations of  
24 these paragraphs.

25       **IX. RESPONSE TO FOURTH CLAIM FOR RELIEF**

26       24. In response to paragraph 49 of the 5AC, Defendants incorporate their responses  
27 to paragraphs 1-48, above.

1           25. In response to paragraphs 50-52 of the 5AC, Defendants deny the allegations of  
2 these paragraphs.

3 || X. RESPONSE TO FIFTH CLAIM FOR RELIEF

4           26. In response to paragraph 53 of the 5AC, Defendants incorporate their responses  
5 to paragraphs 1-52, above.

6           27. In response to paragraphs 54-56 of the 5AC, Defendants deny the allegations of  
7 these paragraphs.

## 8 || XI. RESPONSE TO SIXTH CLAIM FOR RELIEF

9       28. In response to paragraph 57 of the 5AC, Defendants incorporate their responses  
10 to paragraphs 1-56, above.

11           29. In response to paragraphs 58-61 of the 5AC, Defendants deny the allegations of  
12 these paragraphs.

## 13 || XII. RESPONSE TO PRAYER

14       1. In response to the prayer for relief of the Fifth Amended Complaint, Defendants  
15 deny that Plaintiffs are entitled to any relief.

16           2. Except as expressly admitted, Defendants deny every allegation in the Fifth  
17 Amended Complaint.

## AFFIRMATIVE DEFENSES

19 Defendants allege the following affirmative defenses:

20 | 1. Plaintiffs and Decedent failed to mitigate their injury and damages.

21       2. Decedent caused and contributed to his claimed injuries and damages through his  
22 own acts, omissions, and legal fault.

23       3. Other persons, including Jaime Osuna, caused and contributed to Plaintiffs' and  
24 Decedent's claimed injuries and damages through their acts, omissions, and legal fault.

25       4. Defendants are entitled to qualified immunity because Defendants' actions were  
26 objectively reasonable and did not violate any clearly established right.

27       5. Defendants are entitled to statutory immunity from Plaintiffs' claims under California  
28 Government Code sections 820.2, 820.4, 820.6, 820.8, 821.6, 845.2, and 845.6.

6. Plaintiffs' claims are barred in whole or in part by one or more statutes of limitations, including California Government Code sections 945.6 and 950.2, and California Civil Procedure Code section 335.1.

7. Plaintiffs have failed to present timely, relevant claims under the California Government Claims Act.

8. To the extent that Plaintiffs seek monetary damages from Defendants in their official capacities, Plaintiffs' claims are barred by the Eleventh Amendment of the United States Constitution.

## **DEMAND FOR JURY TRIAL**

10 Defendants demand under Federal Rule of Civil Procedure 38 that this matter be tried  
11 by and before a jury to the extent provided by law.

12 Therefore, Defendants ask that:

1. Judgment be entered in favor of Defendants and against Plaintiff;
2. Plaintiffs take nothing under the Fifth Amended Complaint;
3. Defendants be awarded costs of suit incurred;
4. Defendants be awarded attorneys' fees; and
5. Defendants be awarded such other relief that the Court may deem just and

Dated: May 19, 2025

Respectfully submitted,

ROB BONTA  
Attorney General of California  
JON S. ALLIN  
Supervising Deputy Attorney General

/s/ Jeremy Duggan  
JEREMY DUGGAN  
Deputy Attorney General  
Attorneys for Defendants  
Pena, Garcia, and Gallemore

SA2019101902  
39039912.docx

## CERTIFICATE OF SERVICE

Case Name: **Dora Solares v. Ralph Diaz, et al.** No. **1:20-CV-00323-LHR**

---

I hereby certify that on May 19, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS PENA, GARCIA, AND GALLEMORE'S ANSWER TO FIFTH AMENDED COMPLAINT, AND DEMAND FOR JURY TRIAL**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 19, 2025, at Los Angeles, California.

---

J. Sissov

Declarant

---

*/s/ J. Sissov*

Signature

SA2019101902  
67652905.docx